

IN THE DISTRICT COURT OF APPEAL
STATE OF FLORIDA, FOURTH DISTRICT

CASE NO. 4DCA 19-1499, 4D19-1655, 14-2024
L.T. NO. 502019AP000074A, 502019MM002346A, 312019MM000328A

STATE OF FLORIDA

Appellant,

vs.

ROBERT KRAFT

Appellee.

RESPONSE TO STATE'S SECOND MOTION FOR EXTENSION OF TIME

Defendant-Appellee Robert Kraft hereby respectfully opposes the State's belated request for a second extension, this one for 15 days. Having already previewed why he would be opposing any such motion by the State for further extension, Mr. Kraft will not belabor points already made. *See* Response to State's Motion for Extension of Time, *State v. Kraft*, No. 4D19-1499 (Fla. 4th DCA Aug. 9, 2019); *see also* Order Granting Extension of Time for Initial Brief, *State v. Kraft*, No. 4D19-1499 (Fla. 4th DCA Aug. 12, 2019). Rather, it suffices to note that:

1. The State has already had nearly 90 days—which is a multiple of the 30 days afforded by Florida Rules of Appellate Procedure 9.140 and 9.160—to decide whether to continue this appeal and to prepare any opening brief. As already noted, the State had represented that it needed an additional month in order to decide whether to pursue the appeal. Yet no explanation has ever been supplied for why the State needed multiple months to make that threshold decision.

2. The State has now represented to Mr. Kraft's counsel that it has, at long last, decided to pursue the appeal. So be it. But there is no explanation as to why, after deeming the appeal worthy of pursuit, the State could not readily set forth its putative grounds for appeal in an

opening brief. The dispositive issues in the appeal are no less discrete and easily covered than they were a month ago, when Mr. Kraft made clear why no further extension could possibly be warranted in his view. Although the State submits that a “rough draft” of its opening brief awaits further review by “senior members of the Office of the Solicitor General,” Second Motion for Extension of Time to File Initial Brief at 3, ¶ 8, *State v. Kraft*, No. 4D19-1499 (Fla. 4th DCA Sept. 16, 2019), it does not and cannot deny that those senior members have long been familiar with these issues, nor does the State explain why they could not weigh in long before now about briefing for the appeal, part and parcel of assessing the merits of the appeal and whether it should proceed.

3. Ongoing criminal proceedings and speedy trial rights continue to hang in the balance across multiple jurisdictions, while the specter of renewed criminal prosecutions hangs like a Sword of Damocles so long as the State maintains this appeal yet delays resolution.

4. In no event should the State have waited until today, two days after the Court’s specified deadline and the same business day its brief is due under this Court’s rules, to seek a further extension. Such timing obviously denies adequate opportunity for responsive briefing and judicial consideration. Having afforded itself multiple months to file an opening brief, the State should not be expecting the Appellees and Court now to race to complete briefing and ruling on its instant request in less than a day.

* * *

For these reasons, the requested extension should be denied. To the extent the State’s opening brief is not “served within the time provided for in th[is Court’s] order,” the appeal is “subject to dismissal or the court in its discretion may impose other sanctions,” just as this Court

expressly warned. Order Granting Extension of Time for Initial Brief, *State v. Kraft*, No. 4D19-1499 (Fla. 4th DCA Aug. 12, 2019).

Respectfully submitted,

GRAYROBINSON, P.A.

/s/ Frank A. Shepherd

Frank A. Shepherd
frank.shepherd@gray-robinson.com
333 S.E. 2nd Avenue, Suite 3200
Miami, Florida
(305) 416-6880

QUINN EMANUEL URQUHART
& SULLIVAN, LLP

/s/ William A. Burck

William A. Burck (admitted *pro hac vice*)
Alex Spiro (admitted *pro hac vice*)
Derek L. Shaffer (admitted *pro hac vice*)
Sandra Moser (admitted *pro hac vice*)

williamburck@quinnemanuel.com
derekshaffer@quinnemanuel.com
sandramoser@quinnemanuel.com
1300 I Street NW, Suite 900
Washington, D.C. 20005
(202) 538-8000

alexspiro@quinnemanuel.com
51 Madison Avenue, 22nd Floor
New York, NY 10010
(212) 849-7000

Attorneys for Defendant Robert Kenneth Kraft

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been filed with the Clerk of Court using the Florida Courts E-Filing Portal and served via E-Service to counsel of record, on this day, September 16, 2019.

By: /s/ Frank A. Shepherd
Frank A. Shepherd
333 S.E. 2nd Avenue, Suite 3200
Miami, Florida
(305) 416-6880